

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:10-CV-156**

CTS CORPORATION,)	
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
MILLS GAP ROAD ASSOCIATES;)	
FREDERIC SLOSMAN; JOHN)	
POWELL; and STANLEY H.)	
GREENBERG)	
)	
Defendants.)	

This matter is before the Court upon the memorandum and recommendation (“M&R”) of United States Magistrate Dennis L. Howell. [D.I. 27]. In the M&R, Judge Howell recommends dismissal of the Defendants’ two counterclaims, trespass and nuisance. Judge Howell found Defendants’ argument of continuing trespass unpersuasive, and found the trespass claim barred by the applicable three year statute of limitations and the ten year statute of repose in North Carolina. The magistrate did find the Defendants’ argument of nuisance more persuasive, particularly in light of a non-binding but instructive case from the Court of Appeals in California. See KFC Western, Inc. v. Meghriq, 23 Cal.App.4th 1167 (Cal.App. 2 Dist. 1994). However, Judge Howell found the nuisance claim also barred by the statute of limitations and statute of repose.

The parties were advised that pursuant to 28 U.S.C. § 636(b)(1)(C), written objections to the M&R must be filed within 14 days after service of the M&R. Defendants timely filed an

objection [D.I. 28], objecting only to the magistrate's decision on the nuisance claim, and Plaintiff timely filed a reply [D.I.29] .

After an independent and thorough review of the magistrate's M&R, Defendants' objections thereto and the underlying record, the Court concludes that the recommendation to grant Plaintiff's second Motion to Dismiss the Defendants' Counterclaims is correct and in accordance with law. The Court does not find it necessary to reach the decision of whether to dismiss the nuisance claim without prejudice; the claim is clearly time barred and both claims are dismissed with prejudice. Accordingly, the findings and conclusions of the magistrate are accepted, except for the dismissal without prejudice, and Plaintiff's second Motion to Dismiss is **GRANTED**.

IT IS THEREFORE ORDERED that the M&R of the magistrate is hereby **AFFIRMED**.

Signed: May 27, 2011

A handwritten signature in cursive script, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

